HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Revision No. 246/2001
(Old No. 194 of 1988)

Pitamber Dutt Kapil ……Revisionist

Vs.

State of U.P. …….Respondent

Hon'ble Irshad Hussain, J.

None appear for the revisionist. Heard Sri G.S.Sandhu learned A.G.A. for the State and perused the record.

This criminal revision under section 397/401 of the Code of Criminal Procedure, 1973 (for short 'Code') against the judgment and order dated 16.12.1987 passed by the IInd Additional Sessions Judge, Nainital.

The revisionist was prosecuted for an offence punishable under section 7 of the U.P. Regulation of Building Operation Act. After trial, he was held guilty and convicted to pay fine of Rs. 3,000/- by the Judicial Magistrate, Haldwani per order dated 18.7.1986. ON appeal being preferred by the revisionist against the said judgment, the learned Addl. Sessions Judge, Nainital in criminal appeal no. 119/1986 found the judgment of the learned Magistrate based on proper and fair appraisal of the evidence on record and the legal provisions directed thereto and the same was dismissed by judgment and order dated 16.12.1987. Aggrieved, the petitioner preferred this revision.

The main contention of the petitioner-accused was that the prescribed authority had withdrawn the prosecution by his order under section 10 of the said Act and therefore he cannot legally be convicted of the offence under section 9 of the said Act. This aspect has been considered by the courts below and it had been found that the prescribed authority could direct only demolition of the unauthorized and he had no legal authority to withdraw the prosecution once initiated against the wrongdoer. Therefore, the interpretation of the said legal provision had been made by the courts below against the petitioner-accused. Having considered this aspect of the matter, I see no reason to differ with the view taken by the courts below and the judgment of both the courts being

concurrent and based on proper and fair appraisal, the revision lacks merit and is liable to be dismissed.

The revision is dismissed. Stay order dated 12.2.1988 is vacated. Steps for realization of fine shall be taken against the revisionist by the Magistrate concerned.

(Irshad Hussain, J.)

Date 20.4.2004

Rawat